NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENE EHRENSAFT,	No. 02-17394
Plaintiff - Appellant,	D.C. No. CV-S-98-1712-RLH
v.	
DIMENSION WORKS INCORPORATED LONG TERM DISABILITY PLAN,	MEMORANDUM[*]
Defendant - Appellee.	

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, District Judge, Presiding

Argued and Submitted August 13, 2003
San Francisco, California

Before: REINHARDT and GRABER, Circuit Judges, and SHADUR,[**] Senior
District Judge.

---

[*]   This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[**]   The Honorable Milton I. Shadur, Senior United States District Judge, Northern District of Illinois, sitting by designation.

Eugene Ehrensaft ("Ehrensaft") challenged the denial by Dimension Works Inc. Long Term Disability Plan (the "Plan") of his claim for continued long-term disability benefits pursuant to an ERISA group insurance policy. We affirm the district court's grant of summary judgment in the Plan's favor.

In an earlier appeal (No. 01-15062), a different panel of this court issued an April 29, 2002 memorandum disposition (2002 WL 770611) that first identified the appropriate standard of review in these terms (id. at *1):

> The district court properly chose to review Standard's benefit determination for an abuse of discretion.

After a discussion of Ehrensaft's contentions to the contrary, the panel reconfirmed that standard (id.):

> We therefore affirm the district court's application of abuse of discretion rather than de novo review.

 Although the panel applied that standard to uphold the district court's resolution on the merits, it ordered a single-issue remand (id.):

> We remand to the district court for application of the treating physician rule in light of Regula v. Delta Family-Care Plan, 266 F.2d 1130 (9th Cir. 2001), but otherwise affirm the district court's application of an abuse of discretion standard to review the plan administrator's denial of benefits.

Despite the restricted nature of that remand, Ehrensaft has invited the district court, and now this court, to explore other substantive issues. But it is

familiar doctrine that, as <u>In re Beverly Hills Bancorp</u>, 752 F.2d 1334, 1337 (9th

Cir. 1984) has put it:

> On remand, a trial court may not deviate from the mandate of an
> appellate court. As we have stated earlier, "[w]hen a case has been
> decided by an appellate court and remanded, the court to which it is
> remanded must proceed in accordance with the mandate and such law
> of the case as was established by the appellate court." <u>First v. United
> States</u>, 554 F.2d 990, 993 (9th Cir. 1977).

Accord, such cases as <u>Odima v. Westin Tucson Hotel</u>, 53 F.3d 1484, 1497 (9th Cir.

1995):

> When a case has been decided by an appellate court and remanded,
> the court to which it is remanded must proceed in accordance with the
> mandate and such law of the case as was established by the appellate
> court.

And the equally familiar impact of law of the case principles is this (<u>Thomas v.

Bible</u>, 983 F.2d 152, 154 (9th Cir. 1993)):

> Under that doctrine a court is generally precluded from reconsidering
> an issue that has already been decided by the same court, or a higher
> court in the identical case.

Here the underpinning of the sole issue for which remand was ordered has

been removed by the recent decision in <u>Black & Decker Disability Plan v. Nord</u>,

123 S.Ct. 1965 (2003), which abrogated <u>Regula</u> by holding that ERISA does not

require plan administrators to accord special deference to the opinions of treating

physicians. Accordingly the only remand issue has been disposed of, and we

reject Ehrensaft's other contentions (including his proposed substitution of de novo review for the already-decided abuse of discretion standard) for the reasons stated in the preceding paragraph.

AFFIRMED.